

HOUSE BILL 456

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2004 Regular Session
4lr0442
CF 4lr0443

By: **Delegates Cadden, Aumann, Barkley, Boschert, Boutin, G. Clagett,
Conway, DeBoy, Frank, Fulton, Gilleland, Hammen, James, Krebs,
Leopold, Malone, Minnick, Mitchell, Rudolph, Sophocleus, Sossi, Stern,
and Wood**

Introduced and read first time: January 30, 2004
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Firearms Offenses - Project Exile**

3 FOR the purpose of allowing the State to appeal from a certain decision of the District
4 Court or to apply to the Court of Special Appeals for leave to appeal an order of
5 the circuit court setting the amount and conditions of bail claimed to be
6 insufficient before trial or after conviction; making it a felony on school property
7 to possess and intend to use a firearm, display a firearm in a threatening or
8 reckless manner, or attempt to use a firearm; requiring that a person convicted
9 of a certain felony be subject to a certain penalty; prohibiting a District Court
10 commissioner from authorizing the pretrial release of a defendant charged with
11 a certain crime; allowing the court or District Court commissioner to consider
12 including certain requirements as conditions of pretrial release; requiring a
13 judge to consider as a rebuttable presumption that a defendant charged with a
14 certain crime will flee and pose a danger to another person or the community;
15 altering certain criminal penalties for a person who is convicted of possessing a
16 firearm or ammunition after having been previously convicted of a certain
17 crime; and generally relating to the penalties and conditions for pretrial release
18 for certain firearms offenses.

19 BY repealing and reenacting, with amendments,
20 Article - Courts and Judicial Proceedings
21 Section 3-707 and 12-401(b)
22 Annotated Code of Maryland
23 (2002 Replacement Volume and 2003 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article - Criminal Law
26 Section 4-102
27 Annotated Code of Maryland
28 (2002 Volume and 2003 Supplement)

1 BY repealing and reenacting, with amendments,
2 Article - Criminal Procedure
3 Section 5-202(c)
4 Annotated Code of Maryland
5 (2001 Volume and 2003 Supplement)

6 BY repealing
7 Article - Public Safety
8 Section 5-133(c)
9 Annotated Code of Maryland
10 (2003 Volume)

11 BY adding to
12 Article - Public Safety
13 Section 5-133(c)
14 Annotated Code of Maryland
15 (2003 Volume)

16 Preamble

17 WHEREAS, Project Exile is a legislative initiative designed to make gun
18 carrying criminals face immediate prosecution, stiff mandatory prison sentences, and
19 reduced opportunities for prison release -- in effect to "exile" criminals to prison for
20 at least 5 years; and

21 WHEREAS, The goal of Project Exile is to reduce the incidence of gun violence
22 and the firearm "carry rate" -- the frequency with which persons arrested for felonies
23 are found to be carrying firearms; and

24 WHEREAS, Project Exile has proven to be a highly successful program
25 operating in Richmond, Virginia, involving federal, state, and local law enforcement
26 agencies, resulting in greatly reduced homicide, armed robbery, and carry rates; and

27 WHEREAS, It would benefit the residents of Maryland to design a Project Exile
28 program for this State; now, therefore,

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
30 MARYLAND, That the Laws of Maryland read as follows:

31 **Article - Courts and Judicial Proceedings**

32 3-707.

33 (a) If a judge refuses to issue a writ of habeas corpus sought for the purpose of
34 determining the right to bail, or if a judge sets bail claimed to be excessive prior to
35 trial or after conviction, but prior to final judgment, a petitioner may apply to the
36 Court of Special Appeals for leave to appeal from the refusal.

1 (b) (1) A petitioner shall file the application for leave to appeal within ten
2 days after the denial or grant of habeas corpus relief stating briefly why the order of
3 the lower court should be reversed or modified.

4 (2) The record on the application for leave to appeal shall contain a copy
5 of the petition for habeas corpus, the State's answer, if any, the order of the court, and
6 the memorandum of reasons issued by the judge.

7 (3) If the Court grants the application, it may order the preparation of a
8 transcript of any proceedings related to the habeas corpus petition.

9 (c) (1) The Court of Special Appeals may grant or deny the application for
10 leave to appeal. If the Court grants the application, it may affirm, reverse, or modify
11 the order of the lower court granting or denying the relief sought by the writ.

12 (2) If the Court determines that the lower court was wrong in refusing to
13 admit to bail or that the bail set is not appropriate, it may determine the proper
14 amount of bail. This determination is binding on the lower court, unless a change of
15 circumstances warrants a different decision.

16 (D) THE STATE MAY APPLY TO THE COURT OF SPECIAL APPEALS FOR LEAVE
17 TO APPEAL AN ORDER OF THE CIRCUIT COURT SETTING THE AMOUNT AND
18 CONDITIONS OF BAIL CLAIMED TO BE INSUFFICIENT BEFORE TRIAL OR AFTER
19 CONVICTION.

20 12-401.

21 (b) In a criminal case:

22 (1) The State may appeal from [a]:

23 (I) A DECISION OF THE DISTRICT COURT SETTING THE AMOUNT
24 AND CONDITIONS OF BAIL; OR

25 (II) A final judgment entered in the District Court:

26 [(i)] 1. If the State alleges that the trial judge failed to impose the
27 sentence specifically mandated by the Code; or

28 [(ii)] 2. Granting a motion to dismiss, or quashing or dismissing a
29 charging document.

30 (2) The defendant may appeal even from a final judgment entered in the
31 District Court though imposition or execution of sentence has been suspended.

32 **Article - Criminal Law**

33 4-102.

34 (a) This section does not apply to:

1 (1) a law enforcement officer in the regular course of the officer's duty;

2 (2) a person hired by a county board of education specifically for the
3 purpose of guarding public school property;

4 (3) a person engaged in organized shooting activity for educational
5 purposes; or

6 (4) a person who, with a written invitation from the school principal,
7 displays or engages in a historical demonstration using a weapon or a replica of a
8 weapon for educational purposes.

9 (b) (1) A person may not carry or possess a firearm, knife, or deadly weapon
10 of any kind on public school property.

11 (2) A PERSON ON PUBLIC SCHOOL PROPERTY MAY NOT POSSESS AND
12 INTEND TO USE A FIREARM, DISPLAY A FIREARM IN A THREATENING OR RECKLESS
13 MANNER, OR ATTEMPT TO USE A FIREARM.

14 (c) (1) Except as provided in [paragraph] PARAGRAPHS (2) AND (3) of this
15 subsection, a person who violates this section is guilty of a misdemeanor and on
16 conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding
17 \$1,000 or both.

18 (2) A person who is convicted of carrying or possessing a handgun in
19 violation of this section shall be sentenced under Subtitle 2 of this title.

20 (3) (I) A PERSON WHO VIOLATES SUBSECTION (B)(2) OF THIS SECTION
21 IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR
22 NOT LESS THAN 5 YEARS AND NOT EXCEEDING 20 YEARS.

23 (II) THE COURT SHALL IMPOSE A MINIMUM SENTENCE OF 5 YEARS.

24 (III) THE COURT MAY NOT SUSPEND ANY PART OF A MANDATORY
25 MINIMUM SENTENCE.

26 (IV) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE
27 CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN
28 LESS THAN 5 YEARS.

29 **Article - Criminal Procedure**

30 5-202.

31 (c) (1) A District Court commissioner may not authorize the pretrial release
32 of a defendant charged with a crime of violence [if the defendant has been previously
33 convicted:

34 (i) in this State of a crime of violence; or

1 (ii) in any other jurisdiction of a crime that would be a crime of
2 violence if committed in this State] OR POSSESSION OF A FIREARM IN VIOLATION OF
3 § 4-102 OR § 5-621(B) OR (C) OF THE CRIMINAL LAW ARTICLE OR § 5-133(C) OF THE
4 PUBLIC SAFETY ARTICLE.

5 (2) (i) A judge may authorize the pretrial release of a defendant
6 described in paragraph (1) of this subsection on:

7 1. suitable bail;

8 2. any other conditions that will reasonably ensure that the
9 defendant will not flee or pose a danger to another person or the community; or

10 3. both bail and other conditions described under item 2 of
11 this subparagraph.

12 (ii) When a defendant described in paragraph (1) of this subsection
13 is presented to the court under Maryland Rule 4-216(g), the judge shall order the
14 continued detention of the defendant if the judge determines that neither suitable
15 bail nor any condition or combination of conditions will reasonably ensure that the
16 defendant will not flee or pose a danger to another person or the community before
17 the trial.

18 (3) There is a rebuttable presumption that a defendant described in
19 paragraph (1) of this subsection will flee and pose a danger to another person or the
20 community.

21 (4) IN ADDITION TO THE CONDITIONS OF PRETRIAL RELEASE SPECIFIED
22 ELSEWHERE IN THIS SECTION, THE COURT OR DISTRICT COURT COMMISSIONER MAY
23 CONSIDER INCLUDING AS A CONDITION OF PRETRIAL RELEASE A REQUIREMENT
24 THAT THE DEFENDANT:

25 (I) MAINTAIN EMPLOYMENT OR, IF UNEMPLOYED, ACTIVELY SEEK
26 EMPLOYMENT;

27 (II) MAINTAIN OR BEGIN AN EDUCATIONAL PROGRAM;

28 (III) AVOID ALL CONTACT WITH AN ALLEGED VICTIM OF THE CRIME
29 AND WITH ANY POTENTIAL WITNESS WHO MAY TESTIFY CONCERNING THE CRIME;

30 (IV) COMPLY WITH A SPECIFIED CURFEW;

31 (V) REFRAIN FROM POSSESSING A FIREARM, DESTRUCTIVE
32 DEVICE, OR OTHER DANGEROUS WEAPON;

33 (VI) REFRAIN FROM USE OF ALCOHOL OR CONTROLLED
34 DANGEROUS SUBSTANCES; OR

35 (VII) SUBMIT TO DRUG OR ALCOHOL TESTING UNTIL THE
36 DISPOSITION OF THE DEFENDANT'S CASE.

Article - Public Safety

2 5-133.

3 [(c) (1) A person may not possess a regulated firearm if the person was
4 previously convicted of:

5 (i) a crime of violence; or

6 (ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-606, §
7 5-607, § 5-608, § 5-609, § 5-612, § 5-613, or § 5-614 of the Criminal Law Article.

8 (2) A person who violates this subsection is guilty of a felony and on
9 conviction is subject to imprisonment for not less than 5 years, no part of which may
10 be suspended.

11 (3) A person sentenced under paragraph (1) of this subsection may not be
12 eligible for parole.

13 (4) Each violation of this subsection is a separate crime.]

14 (C) (1) (I) A PERSON MAY NOT POSSESS A FIREARM OR AMMUNITION IF
15 THE PERSON WAS PREVIOUSLY CONVICTED OF:

16 1. A CRIME OF VIOLENCE;

17 2. CONSPIRACY TO COMMIT A CRIME OF VIOLENCE;

18 3. A VIOLATION OF § 5-602, § 5-603, § 5-604, § 5-605, § 5-606, §
19 5-607, § 5-608, § 5-609, § 5-612, § 5-613, OR § 5-614 OF THE CRIMINAL LAW ARTICLE; OR

20 4. AN ATTEMPT OR CONSPIRACY TO COMMIT A CRIME
21 LISTED IN ITEM 3 OF THIS SUBPARAGRAPH.

22 (II) A PERSON WHO VIOLATES THIS PARAGRAPH IS GUILTY OF A
23 FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 5
24 YEARS AND NOT EXCEEDING 20 YEARS, NO PART OF WHICH MAY BE SUSPENDED.

25 (III) IT IS MANDATORY ON THE COURT TO IMPOSE NOT LESS THAN
26 THE MINIMUM SENTENCE OF 5 YEARS.

27 (IV) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE
28 CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN
29 LESS THAN 5 YEARS.

30 (2) (I) A PERSON MAY NOT POSSESS A FIREARM OR AMMUNITION IF
31 THE PERSON WAS PREVIOUSLY CONVICTED OF ANY VIOLATION OTHER THAN A
32 CRIME OF VIOLENCE THAT IS CLASSIFIED AS A FELONY IN THE STATE.

33 (II) A PERSON WHO VIOLATES THIS PARAGRAPH IS GUILTY OF A
34 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS

1 THAN 2 YEARS AND NOT EXCEEDING 10 YEARS, NO PART OF WHICH MAY BE
2 SUSPENDED.

3 (III) IT IS MANDATORY ON THE COURT TO IMPOSE NOT LESS THAN
4 THE MINIMUM SENTENCE OF 2 YEARS.

5 (IV) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE
6 CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN
7 LESS THAN 2 YEARS.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2004.